



05 SEP 2007

LADAS & PARRY
26 WEST 61ST STREET
NEW YORK NY 10023

In re Application of :
CADUFF et al. :
Application No.: 10/580,209 : DECISION
PCT No.: PCT/CH2004/000077 :
Int. Filing Date: 10 February 2004 :
Priority Date: 02 December 2003 :
Attorney Docket No.: U 016310-9 :
For: A DEVICE AND METHOD FOR MEASURING :
A PROPERTY OF LIVING TISSUE :

This is a decision on applicants' petition under 37 CFR 1.47(a) filed 10 July 2007 and applicants' supplemental submission filed 09 August 2007 in the United States Patent and Trademark Office (USPTO). The petition is **DISMISSED** without prejudice.

BACKGROUND

On 10 February 2004, applicants filed international application PCT/CH2004/000077, which designated the United States and claimed a priority date of 02 December 2003. A copy of the international application was communicated from the International Bureau to the USPTO on 16 June 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 02 June 2006.

On 22 May 2006, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and the surcharge under 37 CFR 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage.

On 09 February 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 05 April 2007, applicants filed a petition under 37 CFR 1.47(a).

On 10 May 2007, a decision was mailed dismissing applicants' petition under 37 CFR 1.47(a) without prejudice for failing to provide factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, failing to provide a

statement of the last known address of the missing inventor, and for failing to provide an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

On 10 July 2007, applicants filed a renewed petition under 37 CFR 1.47(a).

On 09 August 2007, applicants filed a supplemental submission including numerous letters between Kurt Sutter and non-signing inventor Pascal Truffer and English translations thereof. The submission also included a signed statement of facts by Mr. Sutter.

DISCUSSION

Extension of Time

The decision mailed 10 May 2007 set forth a time limit of ONE MONTH from the mailing date of the decision or within the time remaining in the response set forth in the NOTIFICATION mailed 09 February 2007, whichever was longer. It was noted that no extension of this time limit would be granted under 37 CFR 1.136, but the period for response set in the NOTIFICATION mailed 09 February 2007 could be extended under 37 CFR 1.136(a).

The fee for a four month extension of time for the renewed petition filed 10 July 2007 has been charged to Deposit Account 12-0425.

Petition Under 37 CFR 1.47(a)

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the missing inventor; and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As noted in the decision mailed 10 July 2007, item (1) has been met.

Items (2) and (3) have been met as well.

Item (4) has still not been met. No oath or declaration by each 37 CFR 1.47(a) applicant (i.e., Andreas Caduff, Stephan Buschor, Etienne Hirt, and Gianluca Stalder) on his or her own behalf and on behalf of the non-signing joint inventor has been provided.

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. **Failure to timely file the**

proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301

Facsimile: (571) 273-0459